

<p>Case 1:09-bk-15075-MT Doc 124 Filed 05/17/10 Entered 05/17/10 20:22:03 Desc Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Main Document Page 1 of 43 FOR COURT USE ONLY</p>	
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<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</p>	
<p>In re: Chatsworth Data Corporation</p> <p>Debtor(s).</p>	<p>CASE NO.: 1:09-bk-15075MT</p>

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: 6/7/10	Time: 11:00 a.m.
Location: Judge Tighe; Crtrm 302, US Bankruptcy Court, 21041 Burbank Blvd. 3rd Floor, Woodland Hills, CA 91367	

Type of Sale: ☒ Public ☐ Private Last date to file objections:
5/24/10

Description of Property to be Sold: Substantially all property of the estate; see attached Asset Purchase Agreement (APA)

Complete Motion available at: http://db.tt/x2iDTe

Terms and Conditions of Sale: Auction sale subject to overbid procedures. See attached note and summary and proposed bid procedures attached to APA as Exhibit A thereto.

Complete Motion available at: http://db.tt/x2iDTe

Proposed Sale Price: \$1,360,000 as set forth in the APA.

Overbid Procedure (If Any): See overbid qualification procedures contained in Exhibit A to attached APA

Complete Motion available at: http://db.tt/x2iDTe

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing: 6/7/10 at 11:00 a.m.

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address): _____

Jack Mott, Agent for David Seror Chapter 11 Trustee
JMI Corp. - Venture Services
Tel: 310.722.8647; Fax: 310.919.2903
Email: jackmott@jmicorp.com

Courtroom 302
21041 Burbank Blvd.
3rd Floor
Woodland Hills, CA

Date: 5/17/10

Lewis R. Landau, Attorney at Law (SBN 143391)
 23564 Calabasas Road, Suite 104
 Calabasas, CA 91302
 Voice & Fax: (888)822-4340
 Email: Lew@Landaunet.com

Attorney for David Seror, Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA**

In re: Chatsworth Data Corporation

CHAPTER 11

CASE NUMBER 1:09-bk-15075 MT

DATE: 6/7/10

TIME: 11:00 a.m.

Debtor.

COURTROOM: 302

NOTICE OF MOTION FOR:

Order Authorizing Sale of Substantially All Assets of the Estate, Subject to Overbid, Free and Clear of Liens, Claims and Encumbrances

(Specify name of Motion)

1. TO: All Parties in Interest:
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this Court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents. **See attached summary of Motion. Motion available per details in summary.**
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

Hearing Date: 6/7/10

Time: 11:00 a.m.

Courtroom: 302

Floor: 3rd

☐ 255 East Temple Street, Los Angeles

☐ 411 West Fourth Street, Santa Ana

☒ 21041 Burbank Boulevard, Woodland Hills

☐ 1415 State Street, Santa Barbara

☐ 3420 Twelfth Street, Riverside

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to Local Bankruptcy Rule 9013-1. If you wish to oppose this Motion, you must file a written response with the Bankruptcy Court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the Court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the Judge's self-calendaring procedures.

Dated: 5/17/10

Lewis R., Landau, Attorney at Law

Law Firm Name

By: _____ /s/ Lewis R. Landau

Name: Lewis R. Landau

Attorney for Movant

**SUMMARY OF MOTION TO APPROVE SALE, SUBJECT TO OVERBID,
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

David Seror, the duly appointed and acting chapter 11 trustee ("Trustee") for Chatsworth Data Corporation ("Debtor"), has moved the Court for an order approving the sale of substantially all assets of the Debtor's estate pursuant to 11 U.S.C. § 363(b) and (f), Federal Rules of Bankruptcy Procedure 6004 and Local Bankruptcy Rule 6004-1(c) pursuant to the Asset Purchase Agreement ("APA") a true and correct copy of which is attached hereto as Exhibit 1 free and clear of liens, claims and encumbrances. The motion further requests a finding per 11 U.S.C. § 363(m) that the buyer is a good faith buyer entitled to the protections of such section. A complete copy of the motion is available at the following internet address:

<http://db.tt/x2iDTe>

The following summary of the motion is qualified in its entirety by the motion itself:

On May 1, 2009, the Debtor filed a voluntary chapter 11 petition. David Seror was appointed chapter 11 trustee on February 24, 2010. No creditors committee has been appointed.

The Debtor markets itself as a provider of "advanced solutions for intelligent data capture" and has been in business for 35 years. The Debtor manufactures and sells optical mark readers and image scanning technology used to deliver data capture solutions to gaming/lottery, vote tabulation, education, healthcare and government customers worldwide. The Debtor also manufactures and sells impact indicator and impact recording solutions that help protect valuable assets from mishandling and resulting damage during shipment. The Debtor is a wholly owned subsidiary of Chatsworth Data Solutions, Inc., a publicly held non-reporting company. *See*, www.ChatsworthData.com.

According to the Debtor's amended schedules, as of the commencement of the case, the Debtor had approximately \$2.2 million in business personal property, including cash, receivables, inventory and equipment. The Debtor operates from a month-to-month leased business facility located at 20710 Lassen Street, Chatsworth, California 91311 and has a sales office in Avondale, Arizona also on a month to month lease. The Debtor employs approximately 40 employees.

The Debtor's primary and only secured creditor is Bank of Oklahoma ("BOK") owed \$1,055,316.44 pursuant to BOK's proof of claim. The Debtor scheduled no priority claims and \$1,225,000 in general unsecured claims. The claims bar date was September 14, 2009 and the creditor register reflects 35 claims having been filed including several priority claims. The Trustee has not yet reconciled claims against the Debtor's schedules or books and records. Because the Debtor had operated in chapter 11 for approximately ten (10) months before the Trustee's appointment, there are also various unpaid expenses of administration accrued to date.

After evaluating the Debtor's business, the Trustee has concluded that continuing operations through an internal reorganization is not feasible.

The highest and best offer for a sale of the Debtor's entire business was received from HNB Capital LLC ("HNB") and is set forth in the APA attached hereto as Exhibit 1. The HNB proposal contains the following fundamental terms, but is qualified in full by the APA:

1. Sale of all assets except up to \$40,000 in cash;
2. Minimum sale price at closing of \$1.2 million plus 50% of receivable collections up to \$160,000 in additional proceeds subject to \$40,000 reserve for warranty related items;
3. Deposit upon entry of bidding procedures order of \$35,000;
4. Bidding procedures as follows: (1) minimum overbid \$1.5 million plus break-up fee; (2) bidding increments of \$10,000; (3) pre-sale overbidder qualification; and (4) break-up fee of \$50,000 plus actual expenses of buyer.

The Trustee believes that the foregoing sale terms are reasonable and necessary under the circumstances. Based on the amounts owed to BOK and the administrative expenses accrued in the estate, the Trustee does not believe that the proposed sale will generate a material, if any, dividend for unsecured creditors. The proposed sale of assets is free and clear of all liens, claims and encumbrances. The proposed sale of assets is subject to overbid pursuant to the bidding procedures attached to the APA as Exhibit A thereto.

End of summary.

ASSET PURCHASE AGREEMENT

between

CHATSWORTH DATA CORPORATION, INC.

DAVID SEROR, TRUSTEE

CASE# 1:09-15075-MT

and

CDC DATA, LLC

DATED AS OF MAY 14, 2010

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of May 14, 2010 (the "Execution Date") by and between David Seror, solely in his capacity as Chapter 11 Trustee of CHATSWORTH DATA CORPORATION, INC., a California corporation ("CDC"), with David Seror as Trustee (collectively, hereinafter, "Seller") under Case No.1:09-15075-MT (the "Bankruptcy Case") in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), and CDC Data, LLC, a California limited liability company, ("Purchaser"). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in Section 14.16 of this Agreement.

RECITALS

WHEREAS, on May 1, 2010 (the "Petition Date"), CDC commenced the Bankruptcy Case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the Bankruptcy Court; and,

WHEREAS on Feb 24, 2010, David Seror was appointed Chapter 11 Trustee, and

WHEREAS, CDC is primarily engaged in the business of (i) manufacturing and selling optical mark readers, and image scanning technology used to deliver data capture solutions to gaming/lottery, vote tabulation, education, healthcare and government customers, and (ii) manufacturing and selling impact indicator and impact recording solutions that help protect valuable assets from mishandling and resulting damage during shipment, (such businesses as presently conducted by CDC, collectively, the "Business"); and

WHEREAS, Seller wishes to sell, transfer, convey, assign and deliver to Purchaser, in accordance with Sections 363 and 365 and the other applicable provisions of the Bankruptcy Code, all of the Purchased Assets, together with the Assumed Liabilities of CDC upon the terms and subject to the conditions set forth in this Agreement (hereinafter collectively referred to as the "Transaction");

WHEREAS, Purchaser wishes to purchase and take delivery of such Purchased Assets and Assumed Liabilities upon such terms and subject to such conditions;

WHEREAS, the Purchased Assets will be sold pursuant to a Sale Order of the Bankruptcy Court approving such sale under Section 363 of the Bankruptcy Code and such Sale Order will include the assumption and assignment of certain executory contracts, unexpired leases and liabilities thereunder, as determined by Purchaser in its sole discretion prior to Closing, under Section 365 of the Bankruptcy Code and the terms and conditions of this Agreement; and

WHEREAS, all of the obligations of the parties under this Agreement are conditioned upon the approval of the Bankruptcy Court in accordance with Article 3 hereof.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:



ARTICLE 1 PURCHASE AND SALE

Except as otherwise provided and subject to the terms and conditions set forth in this Agreement and subject to Bankruptcy Court approval, Seller agrees to sell, convey, assign, transfer and deliver to Purchaser, and Purchaser agrees to purchase from Seller at the Closing, all of Seller's right, title and interest in and to the Purchased Assets, free and clear of all Liens, claims or interests of any type or nature, whether known or unknown, of Seller or any other party, other than the Assumed Liabilities.

ARTICLE 2 DESCRIPTION OF PURCHASED ASSETS; EXCLUDED ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1. Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery from Seller, all of Seller's right and title to and interest in and to Seller's business assets, properties, rights (contractual or otherwise) and its affirmative claims, but excluding the Excluded Assets (the assets so included, the "Purchased Assets"). The Purchased Assets shall include, without limitation, all of Seller's right, title and interest in and to the following:

(a) All equipment, machinery or other tangible personal property owned by Seller including, without limitation, the equipment, machinery and personal property listed on Schedule 2.1(a) hereto;

(b) All of Seller's rights, titles and interests in and to the any and all intellectual property owned or utilized by the Seller, including, without limitation, patents, patent rights, patent applications, inventions, trade secrets, processes, formulas, customer lists, proprietary rights, proprietary knowledge, computer software, websites, URLs, domain names, trademarks, names, service marks, brand marks, brand names, trade names, source or object code, copyrights, trade secrets relating to or arising from any proprietary process, symbols and logos related to the Business and all applications therefore, registrations thereof and licenses and sublicenses or agreements in respect thereof, which Seller owns or has the right to use or to which Seller is a party and all filings, registrations or issuances of any of the foregoing with or by any federal, state, local or foreign regulatory, administrative or governmental office, as listed on Schedule 2.1(b), collectively, the "Transferred Intellectual Property";

(c) All leases of equipment, machinery or other tangible personal property to which Seller is a party, as determined by Purchaser in its sole discretion, and as listed on Schedule 2.1(c) hereto (the "Assumed Personal Property Leases");

(d) Those contracts, agreements, contract rights, license agreements, customer contracts, distribution agreements, franchise rights and agreements, purchase and sales orders (if any), quotations and executory commitments, instruments, royalty agreements, third party guaranties, indemnifications, arrangements and understandings, as determined by Purchaser in its sole discretion and as listed on Schedule 2.1(d) hereto (the "Assumed Contracts");

(e) All franchises, licenses, permits, consents, authorizations, approvals and certificates of any regulatory, administrative or other Governmental Authority, as listed on Schedule 2.1(e) hereto (the "Permits");

(f) All of Seller's rights under the lease of real property located at 27010 Lassen Street, Chatsworth California 91311 ("Real Property Lease"), together with all buildings, structures, installations, fixtures and all other leasehold improvements, appurtenant thereto or situated thereon and all other rights, interests and appurtenances of Seller pertaining thereto; provided, however, that such lease shall be subject to further negotiation and agreement by and between Purchaser and any lessor following execution of this Agreement (the "Assumed Leases"); and provided further that Purchaser shall have the right to decline assumption of the Real Property Lease in its sole discretion on the later of the second business day after entry of the Bidding Procedures order or (ii) May 21, 2010.

(g) Seller's marketing and sales materials relating to the Business;

(h) Seller's backlog (*i.e.*, lease and sales (if any) orders, and orders for production and support services that have not been processed);

(i) All of Seller's customer or client lists, files, documentation, records and related documentation related to the Business, including, without limitation, those listed on Schedule 2.1(i) hereto, relating to the Purchased Assets;

(j) All cash, bank account deposits, certificates of deposit, commercial paper, annuities, treasury notes and bills and other marketable securities in excess of \$40,000, but excluding any and all reserved cash or reserved bank accounts specifically reserved for Trustee or Trustee's attorney in an amount not to exceed \$80,000.

(k) Accounts receivable, subject to the following calculation:

- (i) After Closing, Purchaser will forward to Seller fifty percent (50%) of all "Net Collections", 30 days after clearance of funds. "Net Collections" are "Good Receivables" actually collected by Purchaser that were outstanding at Closing *less* a reserve not to exceed \$40,000 held by Purchaser for warranty or potential customer credits ("AR Reserve"). Purchaser projects "Good Receivables" at the time of closing to be no less \$320,000.00. If the amount of "Good Receivables" is less than \$320,000.00, then the consideration paid by Purchaser will be reduced accordingly. "Good Receivables" is defined as domestic receivables less than 60 days old from invoice date for which Debtor has not given any special terms or discounts.
- (ii) The balance in the AR Reserve shall be reduced by bonafide warranty or customer credits originated in transactions prior to the Closing Date.

- (iii) 50% of the remaining balance in the AR Reserve shall be repaid to Seller 60 days after closing, and all of the remaining balance shall be paid 90 days after closing.

(l) All of Seller's security deposits, prepaid expenses and other miscellaneous assets, as listed on Schedule 2.1(l) hereto.

(m) All of Seller's other tangible and intangible assets, other than the Excluded Assets.

(n) All known and unknown, liquidated or unliquidated, contingent or fixed, claims, rights or causes of action which Seller may have against any third party for avoidance and recovery of any preferential or fraudulent transfer.

(o) Subject to insurance carriers willingness to assign such policies to Purchaser, all of Seller's insurance policies relating to the Business or the Purchased Assets, subject to any claims of co-insureds, including, without limitation, all credits, cash or surrender value, all rights to any refunds, all rights to receive proceeds of insurance policies, any outstanding claims thereunder and all rights of offset, counterclaims and insurance coverage thereunder (collectively, the "Insurance Policies"), which such Insurance Policies are as set forth in Schedule 2.2(g) hereto (showing as to each policy or binder the carrier, policy or binder the carrier, policy number, coverage limits, expiration dates, annual premiums and a general description of the type of coverage provided).

Section 2.2. Excluded Assets. Notwithstanding the provisions of Section 2.1, the Purchased Assets shall not include any of the following assets, properties and/or rights of Seller, (collectively, the "Excluded Assets") and liens, claims or encumbrances against such Excluded Assets shall not be altered by virtue of this Agreement:

(a) Any Contracts that are not Assumed Contracts (the "Excluded Contracts");

(b) All cash, bank account deposits, certificates of deposit, commercial paper, annuities, treasury notes and bills and other marketable securities up to a maximum of \$40,000, plus any and all cash or bank accounts specifically reserved for Trustee or Trustee's attorney, up to a maximum of \$80,000.

(c) 50% of Net Collections, up to a maximum of \$160,000;

(d) All of Seller's claims for refunds and/or credits by the Seller of any kind, including for Taxes;

(e) All Employee Plans, including, without limitation, all of Seller's severance, pension, retirement and other employee benefit plans.

(f) Any and all tax refunds due to Seller prior to the effective date of the sale, and any and all NOLs in favor of Seller.

- (g) All of Seller's corporate minute books and organizational documents.
- (h) Any claims which Seller or its bankruptcy estate may have against any of its directors, officers or employees.
- (i) Any claims which have been transferred or assigned to any examiner appointed in the Bankruptcy Case as set forth on Schedule 2.2(n).

Section 2.3. Assumed Liabilities; Non-Assumed Liabilities.

(a) At the Closing, Purchaser shall assume and agree to perform and discharge the following Liabilities of Seller to the extent not previously performed or discharged, and no others: (i) all Liabilities of Seller under the Assumed Personal Property Leases (ii) all Liabilities of Seller which first accrue and are to be performed from and after the Closing under the Assumed Contracts, the Assumed Leases and the Assumed Personal Property Leases, which relate to periods of time on or after the Closing Date, (iii) liabilities and obligations relating to and arising from Purchaser's operation of the Purchased Assets after the Closing, and (iv) customer deposits for prepayments or advances on future purchases which are included in the Purchased Assets (items (i), (ii) (iii) and (iv) are collectively referred to herein as the "Assumed Liabilities"). Except with respect to liabilities associated with item (iv) in the preceding sentence, any executory contract or unexpired lease not specifically designated by Purchaser to be an Assumed Contract, Assumed Lease, Assumed Personal Property Lease or Assumed Liability, shall be an Excluded Asset and Non-Assumed Liability. Purchaser may designate the items to be included on the Schedules set forth in Section 2.1 at any time up to the Closing Date.

(b) Other than the Assumed Liabilities, Purchaser shall not assume or be bound by or be obligated or responsible for any duties, responsibilities, commitments, expenses, obligations or liabilities of Seller or relating to the Purchased Assets or the Business (or which may be asserted against or imposed upon Purchaser as a successor or transferee of Seller as an acquirer of the Purchased Assets or the Business or otherwise as a matter of law) of any kind or nature, fixed or contingent, known or unknown, including, without limitation, the following (collectively, the "Non-Assumed Liabilities"):

- (i) any Liability of Seller in respect of any Taxes arising or accruing prior to the Closing Date;
- (ii) any Liability of Seller under any contract or lease that is not an Assumed Contract, Assumed Lease or Assumed Personal Property Lease, including any Cure Costs incurred in connection with the assumption of such assumed Contract, Assumed Lease or Assumed Personal Property Lease;
- (iii) any Liability of Seller arising out of or resulting from its compliance or noncompliance with any Law;
- (iv) any Liability of Seller arising out of or related to any Legal Proceeding against it or any Legal Proceeding which has an adverse effect on the Purchased Assets or the Business and

which was or could have been asserted on or prior to the Closing Date or to the extent the basis of which arose or accrued on or prior to the Closing Date

- (v) any Liability of Seller for any indemnification obligations pursuant to any claim or notice received or required to be received prior to the Closing Date with respect to any Transferred Intellectual Property;
- (vi) any Liabilities arising under or in connection with any Employee Plans of, or maintained or required to be maintained by, Seller;
- (vii) any Liability pursuant to any personal guaranty or indemnity provided by any officer, director, principal, owner or other party related to Seller; and
- (viii) any Liability that is not an Assumed Liability.

ARTICLE 3 BANKRUPTCY COURT APPROVAL

Section 3.1. Entry of Sale Procedures Order Seller has filed a motion to be heard on May 10, 2010, in form and substance reasonably satisfactory to Purchaser (the "Sales Procedures Motion") with the Bankruptcy Court seeking entry of an order in form and substance satisfactory to Purchaser which shall include all of the following provisions (the "Sale Procedures Order"):

- (a) Competing offers to acquire the Purchased Assets shall:
 - (i) be submitted in writing to Seller and its counsel on or before 4:00 p.m. (Pacific Time) on the business day that is no later than one business day prior to the date of the Sale Hearing (as defined and set forth below);
 - (ii) setting the minimum overbid to be One Million, Five Hundred and Fifty Thousand Dollars (\$1,550,000); and provide for a minimum total cash consideration of at least \$1,300,000, and additional bids in increments of no less than \$10,000;
 - (iii) be accompanied by a signed asset purchase agreement in form and substance substantially similar to this Agreement, together with a redlined, marked copy showing all changes to this Agreement (the "Competing Agreement");
 - (iv) must not be subject to due diligence contingencies or other conditions; provided however any bidder other than Purchaser



shall have an opportunity to review the books and records of the Seller, provided that such bidder shall execute a non-disclosure agreement in form and substance acceptable to Seller in Seller's sole discretion (notwithstanding the foregoing, all due diligence must be completed by all qualified bidders 5 days prior to Auction (as defined below);

- (v) remain open until the conclusion of the Sale Hearing (as defined below), subject to timely completion of due diligence;
- (vi) subject to Section 3.1(a)(iii) above, contain terms and conditions no less favorable to Seller than the terms and conditions of this Agreement;
- (vii) be accompanied by admissible evidence in the form of affidavits or declarations establishing the bidder's good faith, within the meaning of Section 363(m) of the Bankruptcy Code;
- (viii) be accompanied by admissible evidence in the form of affidavits or declarations establishing that the bidder is capable and qualified, financially, legally, and otherwise, of unconditionally performing all obligations under the Competing Agreement;
- (ix) for no less than substantially all of the Purchased Assets; and
- (x) contain a proposed closing date that is not later than the Closing Date hereunder.

(b) If any bidders have submitted a qualifying competing bid in accordance with Section 3.1(a) hereof (each such bid, a "Qualified Bid"), then a public auction of the Purchased Assets (the "Auction") shall be held at the Sale Hearing at the United States Bankruptcy Court for the Central District of California . The Auction shall be governed by the following procedures:

- (i) All bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and to have waived any right to jury trial in connection with any disputes relating to the Auction or the sale of the Purchased Assets;
- (ii) Bidding will commence at the amount of the highest Qualified Bid;
- (iii) Each subsequent bid shall be in increments of no less than \$10,000; and

- (iv) For the Purchaser, the Breakup Fee shall be taken into account in the bidding process, such that if the bid is \$1,700,000 the Purchaser may bid such amount (\$1,660,000) plus the value of the Breakup Fee (\$50,000) to overbid the \$1,700,000 bid for a total bid of \$1,710,000.

(c) A hearing to approve the successful bid at the Auction, or, if no auction is held, to approve this Agreement, shall be scheduled for no later than June 15, 2010, the parties hereby acknowledge satisfaction of this condition through the sale hearing set for __ __, 2010 at __ __ a.m.(the "Sale Hearing Date");

(d) The Breakup Fee in the amount Fifty Thousand Dollars (\$50,000) plus actual reasonable costs and fees incurred by Purchaser is approved and shall be paid to Purchaser in the event that the Bankruptcy Court enters an order approving an offer to purchase the Purchased Assets submitted by a party other than Purchaser or enters an order confirming a plan of reorganization of Seller (other than a plan under which Purchaser acquires the Purchased Assets) no later than the closing of the sale of the Purchased Assets to a third party;

(e) No other bidder for the Purchased Assets shall be entitled to payment of any breakup fee;

(f) Any entity that fails to submit a timely, conforming Qualified Bid, as set forth above, shall be disqualified from bidding for the Purchased Assets at the Auction or the Sale Hearing; and

(g) If no timely, conforming Qualified Bid is submitted, Seller shall request at the Sale Hearing that the Court approve the proposed sale of the Purchased Assets to Purchaser under this Agreement.

Section 3.2. Entry of Order Approving Sale. Seller shall use its best efforts to obtain entry of an order of the Bankruptcy Court approving the terms of this Agreement (the "Sale Order") as soon as practicable following the mutual execution and delivery of this Agreement and approval of the Sale Procedures, but no later than June 20, 2010 ("Sale Order Date"). The Sale Order shall be in accordance with the terms of this Agreement, shall be in a form reasonably satisfactory to Purchaser and Seller, and shall:

(a) approve and direct the sale and assignment of the Purchased Assets to Purchaser and approve and direct the assumption and assignment of the Assumed Leases and Assumed Contracts to Purchaser free and clear of all Liens, claims or interests except those expressly assumed in this Agreement, based on appropriate findings and rulings pursuant to, *inter alia*, Sections 363(b), (f) and (m) and 365 of the Bankruptcy Code, including but not limited to Sections 365(h), (i), (l) and (n) and the release of Purchaser to any rights otherwise associated with and which may otherwise be to the benefit of any third parties;

(b) include a direction that Seller allocate in any Chapter 11 plan of reorganization, including a plan of liquidation, the Consideration in the manner established by Section 5.3(a);

(c) include a direction that Seller and Purchaser consummate the transactions contemplated hereby in accordance with the terms hereof, including all payments required hereunder, on or before the Outside Date;

(d) include a finding that Purchaser is a good faith purchaser pursuant to Section 363(m) of the Bankruptcy Code;

(e) include a finding that Purchaser is not deemed to be a successor to Seller, to have, *de facto* or otherwise, merged with or into Seller or to be a mere continuation of Seller

(f) include a finding that the Consideration is a fair and reasonable price for the Purchased Assets;

(g) include a finding confirming the adequacy of notice to all creditors and parties in interest and parties to any executory contract, unexpired lease or right of entry;

(h) include a finding that the Cure Costs are final and binding upon the applicable counterparty and Seller is authorized and directed to pay such Cure Costs directly from the sale proceeds;

(i) include a direction that Purchaser shall be provided with the Qualified Bid and supporting documentation and evidence that such Qualified Bid satisfies the requirements of the Sale Order; and

(j) include provisions for the retention of jurisdiction in the Bankruptcy Court over matters relating to the transactions contemplated in this Agreement including matters relating to title to the Purchased Assets and claims against the Purchased Assets which arose or were based on facts or occurrences prior to the Closing. Furthermore, the Sale Order shall not have been reversed, stayed, modified or amended.

Seller shall provide notice of any hearing on the motion to approve the Sale Order or any other matter before the Bankruptcy Court relating to this Agreement or the Transaction Documents, in each case as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Central District of California or as otherwise ordered by the Bankruptcy Court.

Notwithstanding anything to the contrary in this Section 3.1 or any other provision of this Agreement, in the event that a Qualified Bid of a third party (an "Alternative Purchaser," and the underlying agreement between the Alternative Purchaser and Seller, the "Alternative APA") is approved by the Bankruptcy Court at the hearing on the Sale Motion, this Agreement, shall become an approved "back-up bid" which may, if exercised by written election by Purchaser and delivered to Seller with twenty four (24) hours of the completion of the Sale hearing, remain open for acceptance by Seller for a period of thirty (30) days following the date upon which such hearing is concluded, but subject and subordinate in all respects to the rights of the Alternative Purchaser under the Alternative APA.

Section 3.3. Certain Bankruptcy Undertakings by Seller.

(a) Seller shall, in good faith, using its commercially reasonable efforts, seek entry of the Sale Order no later than June 20, 2010 (the "Outside Date") and take such actions following the Execution Date as are necessary to consummate the Transactions contemplated by this Agreement in accordance with Sale Order.

(b) Recognizing that the transaction contemplated herein is subject to overbid, from and after the date hereof, except as ordered by the Bankruptcy Court and as is reasonably necessary to adequately market the Assets for overbid, Seller shall neither take any action, nor fail to take any action, which action or failure to act would reasonably be expected to (i) prevent or impede the consummation of the transactions contemplated by this Agreement in accordance with the terms of this Agreement; or (ii) result in (A) the reversal, avoidance, revocation, vacating or modification (in any manner that would reasonably be expected to materially and adversely affect Purchaser's rights hereunder), or (B) the entry of a stay pending appeal.

(c) Affiliates and Insiders. For a period of 60 days after execution of this letter, Seller agrees that it will not solicit any offer or possible offer from any such Affiliate and Insider or enter into any agreement or understanding of any kind to purchase, lease, or otherwise acquire all or a substantial portion of the Assets or business of Debtor from Debtor, any of Debtor's employees or any affiliate or insider of Debtor. As used herein the terms "affiliate" and "insider" have the same as they do in Bankruptcy Code §§ 101(2) and (31), respectively.

(d) Seller shall, in good faith, using its commercially reasonable efforts and with the cooperative efforts of Purchaser, attempt to obtain in the Sale Order an exemption from Transfer Taxes pursuant to Section 1146(c) of the Bankruptcy Code.

(e) If the Sale Procedures Order, the Sale Order or any other order of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for *certiorari* or motion for rehearing or reargument shall be filed with respect thereto), Seller, with the cooperation and support of Purchaser, shall take all steps as may be reasonable and appropriate to defend against such appeal, petition or motion, and shall endeavor to obtain an expedited resolution of such appeal.

ARTICLE 4 INSTRUMENTS OF TRANSFER AND ASSUMPTION

Section 4.1. Transfer Documents. Within three (3) business days prior to the Closing, Seller will deliver to an escrow agent mutually acceptable to Seller and Purchaser ("Escrow Agent"): (a) one or more Bills of Sale in substantially the form attached hereto as Exhibit B (the "Bill of Sale"), and (b) all such other good and sufficient instruments of sale, transfer and conveyance consistent with the terms and provisions of this Agreement, including, without limitation, assignments of leases contracts, accounts receivable and the Transferred Intellectual Property, and any other assignments as shall be reasonably necessary to vest in Purchaser all of Seller's right and title to, and interest in, the Purchased Assets.

Section 4.2. Assignment and Assumption Documents. Within three (3) business days prior to the Closing, Purchaser and Seller will execute and deliver an Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit C (the "Assumption



Agreement”) in order to effect the assignment and assumption of the Assumed Liabilities which shall be delivered to the Escrow Agent.

ARTICLE 5 CONSIDERATION; ALLOCATION

Section 5.1. Consideration. In exchange for the sale, assignment, transfer, conveyance and delivery from Seller of the Purchased Assets, at Closing Purchaser shall:

- (a) assume the Assumed Liabilities pursuant to this Agreement;
- (b) The aggregate purchase price shall be One Million Three Hundred Sixty Thousand Dollars consisting of a
 - (i) cash payment equal to One Million Two Hundred Thousand Dollars (\$1,200,000) (the “Cash Payment”), which Seller shall deliver to an Escrow Agent in readily available funds on the Closing Date; and,
 - (ii) After closing, Purchaser will forward to Seller fifty percent (50%) of all “Net Collections” of the accounts receivable which Purchaser collects 30 days after clearance of funds. “Net Collections” are receivables actually collected by Purchaser that were outstanding at Closing *less* a reserve not to exceed \$40,000 held by Purchaser for warranty or potential customer credits. Purchaser projects “Good Receivables” at the time of closing to be no less \$320,000.00. If the amount of “Good Receivables” is less than \$320,000.00, then the consideration paid by Purchaser will be reduced accordingly. “Good receivables” is defined as domestic receivables less than 60 days old from invoice date for which Debtor has not given any special terms or discounts.
- (c) Items (a) and (b) of this Section 5.1 are referred to collectively as the “Consideration.”
- (d) Good Faith Deposit. Upon the entry of the Bidding Procedures Order, Purchaser will post in Seller’s Trustees segregated trust account, a good faith deposit of \$35,000 (the “Deposit”). The Deposit shall become non-refundable upon Purchaser’s satisfactory completion of its due diligence as specified below. If the Purchaser defaults, the Deposit shall be treated as liquidated damages. If Purchaser is the successful bidder, the Deposit shall be transferred to Seller and applied to the purchase price. If Purchaser is not the successful bidder, the Deposit shall be returned to Purchaser without penalty.
- (e) The Cash Payment, less the amount of the Good Faith Deposit, shall be paid to the Escrow Agent and delivered by the Escrow Agent by wire transfer on the Closing Date to a bank account designated by Seller reduced by any Cure Costs required to be paid in



connection with the Assumed Contracts, Assumed Personal Property Leases or the Assumed Lease and actually paid by the Escrow Agent to the applicable party.

Section 5.2. Allocation of Consideration.

Section 5.3. As soon as practical after the Closing, Purchaser shall deliver to Seller Purchaser's proposed allocation (the "Allocation Statement") of the Consideration (including, without limitation, the Assumed Liabilities) among the Purchased Assets. The Allocation Statement shall allocate the Consideration and any item required to be treated as an adjustment to the Consideration among the various assets comprising the Purchased Assets in accordance with Treasury Regulation 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. If Seller agrees with the Allocation Statement and the allocation among the Purchased Assets set forth therein, Purchaser and Seller shall report and file all tax returns (including any amended tax returns and claims for refund) consistent with such mutually agreed Consideration allocation, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Purchaser and Seller shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms. If, on the other hand, Seller objects to, or otherwise disagrees with the Allocation Statement, Purchaser and Seller shall use their commercially reasonable efforts to agree upon the allocation of the Consideration among the Purchased Assets. In any event, Seller agrees to take no position in its tax returns, which are inconsistent with the Purchaser's allocations of the Consideration for tax purposes. Seller shall be responsible for all fees associated with the preparation of tax returns. Notwithstanding any other provisions of this Agreement, Purchaser's and Seller's obligations under this Section 5.2 shall survive Closing. Prorations. The following prorations relating to the Business and the Purchased Assets will be made as of the Closing Date, with Seller liable to the extent that such items can be determined relate to any time period up to and including the Closing Date and Purchaser liable to the extent that such items can be determined relate to periods subsequent to the Closing Date; provided, however, that for periods of time which straddle the Closing Date and for which the amounts attributable to any item cannot be readily allocable to a particular date, the obligations and liabilities shall be prorated between the Purchaser and the Seller based upon the total amount of days in any allocable period and the amount of days which precede the Closing (allocable to the Seller) and the amount of days during such period which are on or are on or after the Closing (allocable to the Purchaser):

- (a) Real, sales, ad valorem, personal property and all similar taxes and assessments relating to the Property and the Business;
- (b) Water, sewer and other similar types of taxes, and installments on special benefit assessments;
- (c) Electric, gas, telephone and utility charges;
- (d) Charges under maintenance and service contracts and fees under licenses transferred to or assumed by Purchaser;



(e) Any and all payments due under Assumed Contracts, Assumed Leases or Assumed Personal Property Leases; subject to any payment restructurings with Bankruptcy Court approvals, and

(f) Prepaid expenses of Seller to the extent that the benefit thereof will be available to Purchaser after the Closing Date.

Seller shall be responsible for all sales, transfer and documentary Taxes and recording fees and Taxes applicable to the transactions contemplated hereby or imposed by reason of the transfers of the Purchased Assets provided under this Agreement and any deficiency, interest or penalty asserted with respect thereto (collectively, the "Transfer Taxes"). Purchaser shall pay the fees and costs of recording or filing all applicable conveyance instruments contemplated hereunder. Purchaser shall pay all costs of applying for new Permits and obtaining the transfer of existing Permits which may be lawfully transferred.

Section 5.4 Payment of Prorations. Seller and Purchaser shall cooperate after Closing to make a final determination of the prorations and adjustments required hereunder, and all other items of income and expense as are customarily prorated or adjusted upon the sale and purchase of property similar to the Purchased Assets, as soon as reasonably practicable, but in no event later than 120 days after the Closing Date (the "***Reconciliation Period***") (except with respect to any item which is not determinable within such time frame, as to which the time period shall be extended until promptly after such item is determinable). Upon the final reconciliation of the prorations and adjustments under this Section 5.4, the Party which owes the other Party any sums hereunder shall pay such Party such sums within ten (10) days after the reconciliation thereof; provided however, that Purchaser may elect to pay the full amount of any item otherwise required to be pro-rated and offset seller's share of such item against Seller's share of Net Collections as determined in Section 2.1(i). It is the intent of the Parties that all items herein which are subject to apportionment shall result in Seller receiving all of the economic benefits and burdens of the business with respect to the period prior to the Closing Date, and Purchaser receiving all of the economic benefits and burdens of the Business with respect to the period from and after the Closing Date.

ARTICLE 6 CLOSING

Section 6.1. Closing Date. Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of David Seror, Trustee or such other location as may be mutually agreed upon between the Parties on the date which is the third (3rd) business day following the date on which all conditions to Closing set forth in Articles 10 and 11 hereof have been satisfied or waived (the "Closing Date") and the Sales Order becomes final and nonappealable. The Closing shall be effective as of 2:00 a.m. Pacific Time on the day after the Closing Date. The Closing Date will be no later than June 30, 2010 unless the parties hereto mutually agree to a later date.

ARTICLE 7 SELLER'S REPRESENTATIONS AND WARRANTIES

Section 7.1. Authorization, Execution and Delivery of Agreement and Transaction Documents. The execution, delivery and performance of this Agreement and the other Transaction Documents by Seller and the transfer or assignment of the Purchased Assets to Purchaser have been duly and validly authorized and approved by all necessary corporate action. Subject to obtaining the Sale Order and pursuant thereto, Seller will have full power, right and authority to sell and convey to Purchaser the Purchased Assets owned by Seller. The Sale Order to be entered by the Bankruptcy Court shall provide that this Agreement is, and each of the other Transaction Documents when so executed and delivered will be, a valid and binding obligation of Seller, enforceable against such Seller in accordance with its terms.

Section 7.2. Real Property. CDC does not own any real property.

Section 7.3. Title to Purchased Assets. Schedule 7.3 sets forth a correct and complete list of all Liens on the Purchased Assets. Except as set forth in Schedule 7.3, Seller has good and valid title to all of the Purchased Assets, which shall be free and clear of all Liens as of the Closing Date, subject to any required "cure" payments. Seller has not pledged, assigned, hypothecated, leased, licensed or otherwise transferred any of its right, title or interest in any of the Purchased Assets.

Section 7.4. Material Contracts. Schedule 7.4 sets forth a correct and complete list of all contracts that are Material to the ownership or operation of the Business and the Purchased Assets in the Ordinary Course of Business. Except as set forth on Schedule 7.4, Seller is not a party to any management, franchise, license, concession or other contract with respect to the Business or the Purchased Assets. For these purposes "Material" contracts are any contracts involving revenues or expenses which, in the aggregate, involves a sum in excess of \$10,000 and which cannot be terminated on less than 30 days notice without the payment of termination fees.

ARTICLE 8 PURCHASER'S REPRESENTATIONS

Purchaser represents and warrants (and as to Section 8.5, acknowledges) to Seller that the statements contained in this Article 8 are true, correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article 8).

Section 8.1. Organization; Qualification and Corporate Power. Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of California. Purchaser has all necessary power and authority to (a) own and operate its properties, (b) carry on its business as it is now being conducted, (c) perform its obligations under this Agreement and the other Transaction Documents, and to undertake and carry out the transactions contemplated hereby and thereby, and (d) own and operate the Purchased Assets and Business.



Section 8.2. Authorization, Execution and Delivery of Agreement and Transaction Documents. All necessary consents and approvals have been obtained by Purchaser for the execution and delivery of this Agreement and the Transaction Documents. The execution, delivery and performance of this Agreement and the other Transaction Documents in accordance with their terms by Purchaser have been duly and validly authorized and approved by all necessary corporate action. Purchaser has full power, right and authority to acquire the Purchased Assets. This Agreement is, and each of the other Transaction Documents when so executed and delivered will be, a valid and binding obligation of Purchaser, enforceable against it in accordance with its terms.

Section 8.3. Brokers. Purchaser has not engaged any agent, broker or other Person acting pursuant to the express or implied authority of Purchaser which is or may be entitled to a commission or broker or finder's fee in connection with the transactions contemplated by this Agreement or otherwise with respect to the sale of the Purchased Assets.

Section 8.4. Funding. As of the Closing Date, Purchaser shall have available to it all of the required cash or financing to pay the Consideration at Closing and to otherwise perform all of Purchaser's obligations pursuant to this Agreement. Purchaser's financial ability to consummate the transaction under this Agreement is therefore not subject to any financing contingency.

ARTICLE 9 SELLER'S AND PURCHASER'S COVENANTS AND AGREEMENTS

Section 9.1. Conduct of Business. Subject to any restrictions and obligations imposed by the Bankruptcy Court, Seller will not, without Purchaser's consent, engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business, including, without limitation, any amendment or change to its employee retention program, or any employment agreements between Seller and its employees. Without limiting the generality of the foregoing (but subject to the express limitation set forth in the immediately preceding sentence), Seller will, other than in the Ordinary Course of Business, refrain from doing any of the following in respect of the Purchased Assets: (i) disposing of, or transferring, any material Purchased Asset, (ii) transferring any tangible Purchased Asset to any other location to the extent that such other location is not among the locations which is the subject of an Assumed Lease or otherwise part of the Purchased Assets, (iii) except as otherwise provided or required in this Agreement, terminating, amending or modifying the material terms of any of the Assumed Contracts, Assumed Leases or Assumed Personal Property Leases; or (iv) making any change in the compensation payable or to become payable to the employees of the Business, other than increases or promotions in the Ordinary Course of Business or compensation provided for in Seller's key employee retention or similar program or employment agreements, approved by the Bankruptcy Court; provided, however, notwithstanding anything to the contrary in the preceding sentence, Seller may, upon prior written notice to Purchaser in their reasonable discretion take such actions in connection with or as a result of the consequences (adverse or otherwise) of filing the Chapter 11 Case, if any, to cure defaults in respect of the Assumed Contracts, Assumed Leases or Assumed Personal Property Leases. Until the Closing, Seller shall maintain the operations of the Business and goodwill of the Business; continue its existing relationships with persons having business dealings with Seller; maintain all of the

Purchased Assets in their current condition, ordinary wear and tear excepted, and shall maintain existing insurance coverages on the Purchased Assets; maintain its books and records, including recognition of revenue and expenses, continue to collect accounts receivable without discontinuing or accelerating payment of such accounts receivable utilizing normal procedures (but not allowing payables to exceed normal payment terms) and comply with all contractual obligations.

Section 9.2. Mutual Covenants. The parties hereto mutually covenant (and subject to the other terms of this Agreement):

(a) from the date of this Agreement to the Closing Date, to cooperate with each other in determining whether filings are required to be made or consents required to be obtained in any jurisdiction in connection with the consummation of the transactions contemplated by this Agreement and in making or causing to be made any such filings promptly and in seeking to obtain timely any such consents (each party hereto shall furnish to the other and to the other's counsel all such information as may be reasonably required in order to effectuate the foregoing action), which consents shall not, in any event, include any consent the need for which is obviated by the Sale Order or otherwise by the provisions of the Bankruptcy Code;

(b) after the Closing Date, each of the parties hereto will give, or cause to be given, to the other and/or the other's representatives, during normal business hours: (i) reasonable access, to the extent permitted by applicable law, to its personnel, properties, titles, contracts, books, records, files and documents (collectively, the "Documentation"); provided, however, Seller shall only be entitled to such reasonable access from Purchaser as required in connection with the transactions contemplated hereby or as is otherwise necessary or appropriate in connection with Seller's ongoing administration and/or closing of the Bankruptcy Case; and (ii) at the requesting party's expense, copies of such Documentation, as necessary to allow the requesting party to obtain information in connection with any claims, demands, other audits, suits, actions or proceedings by or against such requesting party as the owner and operator of the Purchased Assets and the Business or otherwise in furtherance of the purposes described in clause (i) above, including, without limitation, in connection with Seller's bankruptcy proceedings. In connection with access to the records of a party's accountants, the requesting party shall execute and deliver such "hold harmless" agreements as the other party's accountants may reasonably request; and

(c) from the date of this Agreement to the Closing Date, to advise the other parties promptly if such party determines that any condition precedent to its obligations hereunder will not be satisfied in a timely manner.

Section 9.3. Filings and Authorizations. The parties hereto shall, as promptly as practicable, cause to be made all such filings and submissions as may be required to consummate the terms of this Agreement. Seller and Purchaser shall keep each other apprised of the status of any communications with, and inquiries or requests for additional information from, any Governmental Authority, and shall comply promptly with any such inquiry or request. Seller shall not make any filings or submissions without the prior approval of Purchaser, which approval shall not be unreasonably withheld.

Section 9.4. Access to Information.

(a) Prior to and through the Closing Date, Seller shall, so long as such cooperation and access are not materially disruptive of Seller's operation of the Business, cooperate with Purchaser and shall give Purchaser and its representatives (including Purchaser's accountants, consultants, counsel and employees), upon reasonable notice and during normal business hours, full access to the properties (including any Leased Real Property), contracts, leases, equipment, employees, affairs, books, documents, records and other information of Seller to the extent relating to the Business, the Purchased Assets, Assumed Liabilities, and any other aspect of this Agreement and shall cause their respective officers, employees, agents and representatives to furnish to Purchaser all available documents, records and other information (and copies thereof), to the extent relating to the Business, the Purchased Assets, Assumed Liabilities, and any other aspect of this Agreement as Purchaser may reasonably request. Purchaser expressly acknowledges and agrees that nothing in this Section 9.4 is intended to give rise to a condition or contingency of any kind to Purchaser's obligation to consummate the transactions contemplated in this Agreement.

(b) Seller agrees to use commercially reasonable efforts to obtain consent from any third party with respect to a restriction against allowing Purchaser to receive and review any contract, agreement or lease of Seller.

Section 9.5. Deliberately omitted.

Section 9.6. Taxes.

(a) Seller shall be responsible for all Taxes in connection with, relating to or arising out of the Business or the ownership of the Purchased Assets, or the Assumed Liabilities attributable to taxable periods, or portions thereof, ending on or before the Closing, which Taxes shall be a Non-Assumed Liability. Subject to the terms of Section 5.4, Purchaser shall be responsible for all Taxes in connection with, relating to or arising out of the Purchased Assets attributable to taxable periods, or portions thereof, from and after the Closing. All state and local sales and use Taxes, to the extent attributable to periods prior to the Closing, shall be paid or otherwise discharged by Seller, including any and all sales taxes incurred or owed as a result of the transactions contemplated by this Agreement.

(b) If Seller is unable to obtain an exemption, pursuant to Section 1146(c) of the Bankruptcy Code in the Sale Order, from all sales, transfer and documentary Taxes and recording fees and Taxes applicable to the transactions contemplated hereby (collectively, the "Transfer Taxes"), such Transfer Taxes shall be borne and paid 100% by Seller.

(c) Seller and Purchaser shall (i) provide the other with such assistance as may reasonably be requested by either of them in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to Taxes, (ii) retain and provide the other with any records or other information which may be relevant to such return, audit, examination or proceeding, and (iii) provide the other with any final determination of any such audit or examination proceeding or

determination that affects any amount required to be shown on any Tax Return of the other for any period (which shall be maintained confidentially).

Section 9.7. Consents. Each party hereto will use its reasonable commercial efforts and will cooperate with the other party hereto to obtain all consents required from third persons, whose consent or approval is required pursuant to any Assumed Contract, Assumed Lease, Assumed Personal Property Leases, Permit, or otherwise, in order to consummate the transaction contemplated hereby; provided it shall be the responsibility of Seller to obtain any necessary such consents; and further provided that Purchaser and Seller agree that Seller shall not be required to obtain any consent the need for which is obviated by the entry of the Sale Order or otherwise by any provision of the Bankruptcy Code or where the failure to obtain such consent would have a Material Adverse Effect. In connection with the foregoing the Purchaser and the Seller agree that the only consents and waivers necessary for the consummation of the Transactions are those consents and waivers listed in Schedule 9.7 hereto (the "Required Consents").

Section 9.8. Good Faith Efforts. Without limiting the specific obligations of any party hereto under any covenant or agreement hereunder, each party hereto shall use its good faith efforts to take all action and do all things necessary to consummate the transactions contemplated in this Agreement on or before the Outside Date.

Section 9.9. Employees.

(a) Subject to and in accordance with the provisions of this Section 9.9, Purchaser may, but need not, effective upon the Closing, offer employment to the employees who are employed by Seller as of the Closing and are listed on Schedule 9.9 hereto on terms and conditions acceptable to Purchaser. Purchaser shall hire all of the Employees who accept such offer. Employees who accept such offers and become either full-time or part-time employees of Purchaser upon the Closing are hereinafter referred to as "Transferred Employees." Seller shall use reasonable efforts to assist Purchaser in securing the employment of the Employees.

(b) The employment of each Transferred Employee by Seller shall end effective as of the close of business on the day before the Closing and the employment of the Transferred Employees by Purchaser shall commence at or after 12:01 a.m. on the day of the Closing.

Section 9.10. Survival of Representations and Warranties. None of the representations and warranties of Seller to Purchaser contained in this Agreement or made in any other documents or instruments delivered pursuant to this Agreement shall survive the Closing hereunder. The representations and warranties of the Purchaser shall survive the Closing.

Section 9.11. "AS IS" Transaction; Disclaimer of Implied Warranties. Except as expressly provided in Article 7 above, Purchaser hereby acknowledges and agrees that Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets (including income to be derived or expenses to be incurred in connection with the Purchased Assets, the physical condition of any personal property comprising a part of the Purchased Assets or which is the subject of any Assumed

Contract or Assumed Personal Property Leases, the environmental condition or other matter relating to the physical condition of any real property or improvements which are the subject of any Assumed Leases, the zoning of any such real property or improvements, the value of the Purchased Assets (or any portion thereof), the transferability of the Purchased Assets, the terms, amount, validity, collectability or enforceability of any Assumed Liabilities, Assumed Contracts, Assumed Leases or Assumed Personal Property Leases, the title of the Purchased Assets (or any portion thereof), the merchantability or fitness of the personal property comprising a portion of the Purchased Assets or any other portion of the Purchased Assets for any particular purpose, or any other matter or thing relating to the Purchased Assets (or any portion thereof). Without in any way limiting the foregoing, except as otherwise expressly provided in Article 7 above, Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets. Purchaser further acknowledges that Purchaser has conducted an independent inspection and investigation of the physical condition of all portions the Purchased Assets and all such other matters relating to or affecting the Purchased Assets as Purchaser deemed necessary or appropriate and that in proceeding with the consummation of its acquisition of the Purchased Assets, except for the representations and warranties set forth in Article 7 above, Purchaser is doing so based solely upon such independent inspections and investigations. Accordingly, and in light of the fact that the representations and warranties set forth in Article 7 will lapse and terminate and be of no further force or effect following the Closing, Purchaser will accept the Purchased Assets at the Closing "AS IS," "WHERE IS," and "WITH ALL FAULTS."

Section 9.12 Purchaser's Covenant to Remit Seller's Net Collections. On the thirtieth (30th) day after such funds clear Purchaser's bank account, Purchaser shall remit 50% of Net Collections of the Good Receivables which Purchaser collects, to Seller, subject to Purchaser's right to offset any pro-rated costs otherwise payable to Seller which Purchaser pays.

Section 9.13 Seller's Covenant to Transfer Bank Accounts. Seller shall take all steps necessary to transfer signatory authority to Purchaser and to remove any Seller party as an authorized signatory; provided however that this provision shall not apply to any bank account held by the Trustee and excluded from the Purchased Assets under the provisions of Section 2.1(j).

Section 9.14 Purchaser's Covenant to Remit Seller's 50% of the remaining balance in the warranty reserve 60 days after closing, and all of the remaining balance shall be paid 90 days after closing.

ARTICLE 10 CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATION TO CLOSE

The obligation of Purchaser under this Agreement with respect to the purchase and sale of the Purchased Assets shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by Purchaser:

Section 10.1. Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by Seller shall, to the best of Seller's knowledge, be true and correct in all material respects on and as of the date hereof

(unless such representation or warranty is given as of a particular date in which case such representation or warranty will be considered only as of such particular date) and at and as of the Closing Date, except to the extent that such representations and warranties are qualified by terms such as "material" and "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing Date. Seller shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement and each other Transaction Document to be performed or complied with by it on or prior to the Closing.

Section 10.2. Authorizing Resolutions. Seller shall have delivered to Purchaser copies of the authorizing resolutions of the Board of Directors of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and all instruments and documents to be delivered in connection herewith and the transactions contemplated hereby or thereby.

Section 10.3. Officer's Certificate. Seller shall have delivered to Purchaser a certificate executed by an executive officer of Seller (including incumbency certificates) as Purchaser may reasonably request in order to evidence compliance with the conditions set forth in this Article 10.

Section 10.4. Bill of Sale; Assumption Agreement. Seller shall have delivered to Purchaser an executed Bill of Sale and Assumption Agreement pursuant to Sections 4.1 and 4.2 hereof.

Section 10.5. Bankruptcy Matters. The Sale Procedures Order and the Sale Order shall have been entered by the Bankruptcy Court by no later than the Sale Order Date. All such orders must be in effect, and must not have been reversed or stayed or modified in any material respect.

Section 10.6. Consents. Purchaser shall have received all required consents, including the consent of Purchaser's board of directors and lenders.

Section 10.7. No Material Adverse Change or Destruction of Property. Between the date hereof and the Closing and except as otherwise provided in this Agreement, there shall have been no Material Adverse Change to the Purchased Assets or the Assumed Liabilities which would continue to affect the Purchaser's utilization of the Purchased Assets following the Closing.

Section 10.8. Outside Date. The Closing shall have occurred no later than the Outside Date, unless such date is extended in writing by Purchaser.

Section 10.9. Real Property Lease. Purchaser shall have the right, but not the obligation to assume the Real Property Lease or to enter into a new lease for the property at 20710 Lassen Street, Chatsworth, CA 91311-4507. Purchaser shall exercise this election on or before the later of (i) the second business day after entry of the Bidding Procedures order or (ii) May 21, 2010.

ARTICLE 11 CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

The obligations of Seller under this Agreement with respect to the purchase and sale of the Purchased Assets shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which, other than the condition set forth in section 11.6 below, may be waived in writing by Seller:

Section 11.1. Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by Purchaser in this Agreement shall, to be best of Purchaser's knowledge, be true and correct in all material respects on and as of the date hereof (unless such representation or warranty is given as of a particular date in which case such representation or warranty will be considered only as of such particular date) and at and as of the Closing Date.

Section 11.2. Authorizing Resolutions. Purchaser shall have delivered to Seller copies of the authorizing resolutions of its Board of Directors authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and all instruments and documents to be delivered in connection herewith and the transactions contemplated hereby or thereby together with copies of all other documents that the Seller may reasonably request relating to the existence of the Purchaser and the authority of the purchaser to execute the agreement, all in form and substance reasonably satisfactory to the Seller.

Section 11.3. Assumption Agreement. The Purchaser shall have executed and delivered to the Seller this Agreement and all ancillary agreements hereto, including an executed Assumption Agreement pursuant to Section 4.2 hereof.

Section 11.4. Bankruptcy Matters. The Sale Order shall have been entered by the Bankruptcy Court by no later than the Outside Date, respectively. The Sale Order must be in effect, and must not have been reversed or stayed or modified in any material respect.

Section 11.5. Outside Closing Date. The Closing shall have occurred no later than the Outside Date, unless such date is extended by Seller

Section 11.6. Payment of Consideration. The Purchaser shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing Date, including payment of the Consideration in accordance with Article 5 of this Agreement

Section 11.7. Due Diligence. Purchaser shall complete its due diligence to its sole and unfettered satisfaction on or before May 13, 2010 ("Due Diligence Expiration Period"). If prior to that date, Purchaser is not satisfied with its due diligence Purchaser will advise Seller in writing and the Transaction shall terminate without penalty. Seller will cooperate with Purchaser in connection with Purchaser's due diligence process. Seller will permit representatives of Purchaser to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of Seller, to all customers, suppliers, premises, properties, personnel, books, records, contracts and documents of or pertaining to Debtor and its Assets up to and including the Closing Date. Purchaser's representatives may

make copies and extracts from such documents of Seller subject to any and all confidentiality restrictions to which Purchaser has agreed.

ARTICLE 12 TERMINATION

Section 12.1. Breaches and Defaults; Opportunity to Cure. Prior to the exercise by a party of any termination rights afforded under this Agreement, if either party (the "Non-Breaching Party") believes the other (the "Breaching Party") to be in breach hereunder, the Non-Breaching Party shall provide the Breaching Party with written notice specifying in reasonable detail the nature of such breach, whereupon if such breach is curable the Breaching Party shall have two (2) business days from the receipt of such notice to cure such breach to the reasonable satisfaction of the Non-Breaching Party; provided, however, that the cure period for a breach shall in no event extend beyond the Outside Date. If the breach is not cured within such time period, then the Non-Breaching Party shall be entitled to terminate this Agreement if the breach is such that the condition set forth in Section 10.1 or 11.1, as applicable, shall not be satisfied (as provided in Section 12.2). This right of termination shall be in addition to, and not in lieu of, any rights of the Non-Breaching Party under Article 12 of this Agreement. Upon any termination with respect to which Purchaser is a Non-Breaching Party, among other equitable and legal rights and remedies available to purchaser, Seller shall cause the Consideration Deposit to be promptly returned to Purchaser.

Section 12.2. Termination. This Agreement may be terminated and the transactions contemplated herein may be abandoned, by written notice given to the other party hereto, at any time prior to the Closing:

- (a) by mutual written consent of Seller and Purchaser;
- (b) by Seller or Purchaser if (i) the Bankruptcy Court enters an Order approving the sale of the Purchased Assets to a third-party purchaser following the hearing on the Sale Order, or (ii) the Sale Procedures Order and the Sale Order are for any reason (other than a breach or default hereunder by the party seeking to terminate) not entered on or before the Outside Sale Order Date;
- (c) subject to the right to cure set forth in Section 12.1 at any time prior to the Closing Date, by Purchaser if Seller alters, amends or breaches any of the covenants in Section 9.1, is in breach of any material covenant, representation, undertaking or warranty, or if it appears that a condition set forth in Article 10 is impossible (other than through the failure of Purchaser to comply with its obligations under this Agreement) to satisfy and Purchaser has not waived such condition in writing on or before the Closing Date;
- (d) subject to the right to cure set forth in Section 12.1, at any time prior to the Closing Date by Seller if Purchaser is in breach of any material covenant, representation or warranty or if it appears that a condition set forth in Article 11 is impossible (other than through the failure of Seller to comply with their obligations under this Agreement) to satisfy and Seller has not waived such condition in writing on or before the Closing Date;

(e) at or prior to the Bankruptcy Court hearing regarding approval of this Agreement, by either Seller or Purchaser, if an Alternative Bid is accepted and approved by the Bankruptcy Court, and (ii) Purchaser's right to terminate this Agreement pursuant to this Section 12.2(e) is subject to the "back-up bid" provisions of Section 3.1(d) above;

(f) by Purchaser if Seller refuses to close for any reason whatsoever, other than a breach or default by Purchaser of Purchaser's obligations under this Agreement;

(g) by Seller or Purchaser if the Closing shall not have occurred on or before the Outside Date, unless the failure to have the Closing shall be due to the failure of the party seeking to terminate this Agreement to perform in any material respect its obligations under this Agreement required to be performed by it at or prior to the Closing; or

(h) by Purchaser for any reason prior to the expiration of the Due Diligence Expiration Period.

Section 12.3. Liquidated Damages. In the event that Purchaser is a "Breaching Party" and fails to consummate the transactions contemplated hereunder, Seller shall be entitled to retain the Deposit as full and complete compensation (and not as a penalty) for such breach which shall be Seller's sole and exclusive remedy for such breach. If Seller is a "Breaching Party" and fails to consummate the transaction, Purchaser shall be entitled to the Break-Up Fee plus actually expenses incurred, as full and complete compensation (and not as a penalty) for such breach which shall be Seller's sole and exclusive remedy for such breach.

Upon entry of the Sale Order, the mutual termination right set forth in Section 12.2(b) above shall cease.

ARTICLE 13 BROKERS' FEES

Each party represents and warrants to the other that it shall be solely responsible for the payment of any fee or commission due to any broker or finder it has engaged with respect to this transaction, if any, and the other party hereto shall be indemnified for any liability with respect thereto.

ARTICLE 14 MISCELLANEOUS

Section 14.1. Additional Instruments of Transfer. From time to time after the Closing, each party shall, if requested by another party, make, execute and deliver such additional assignments, bills of sale, deeds and other instruments and documents, as may be reasonably necessary or proper to carry out the specific provisions of this Agreement, including, without limitation, transfer to Purchaser of all of Seller's right, title and interest in and to the Purchased Assets and any right, title or interest that Seller may have in any asset used or held for use in Business, other than an Excluded Asset.

Section 14.2. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if

delivered personally, sent by telecopier, recognized overnight delivery service or registered or certified mail, return receipt requested, postage prepaid, to the following addresses:

If to Purchaser:

Howard Brand
President,
HNB Capital LLC
1732 Aviation Blvd, Suite 223
Redondo Beach, CA 90278
Facsimile: 310.379.0940
Email: hnb@gte.net

with a required copy to:

Michael H. Weiss.
Weiss & Spees, LLP
1925 Century Park East, Suite 650
Los Angeles, California 90067
Facsimile: 424-245-3199
Email: mw@weissandspees.com

If to Seller:

David Seror, Trustee,
Ervin Cohen & Jessup LLP
9401 Wilshire Boulevard, Ninth Floor
Beverly Hills, California 90212-2974
Facsimile: 310-887-6822
Email: dseror@ecjlaw.com

with required copies to:

Lewis Landau
Attorney at Law
23564 Calabasas Road, Suite 104
Calabasas, CA 91302
Voice and Fax: (888)822-4340
Email: lew@landaunet.com

Notices delivered personally shall be effective upon delivery against receipt. Notices transmitted by telecopy shall be effective when received, provided that the burden of proving notice when notice is transmitted by telecopy shall be the responsibility of the party providing such notice. Notices delivered by overnight mail shall be effective when received. Notices delivered by registered or certified mail shall be effective on the date set forth on the receipt of registered or certified mail, or 72 hours after mailing, whichever is earlier.



Section 14.3. Expenses. Except as provided in the second sentence of this Section 14.3, and, to the extent that Purchaser is otherwise entitled thereto in accordance with the provisions of this Agreement, each party shall bear its own expenses and costs, including the fees of any attorney retained by it, incurred in connection with the preparation of this Agreement and the consummation of the transactions contemplated hereby. In the event either party shall bring any action or proceeding in connection with the performance, breach or interpretation of this Agreement or any Transaction Document, the prevailing party in such action or proceeding shall be entitled to recover from the losing party all court costs reasonable costs and expenses of such action, including, without limitation, attorneys' fees.

Section 14.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without application of principles of conflicts of law). In connection with any controversy arising out of or related to this Agreement, Seller and Purchaser hereby irrevocably consent to the exclusive jurisdiction of the Bankruptcy Court, or if, and only if, the Bankruptcy Case has been closed, the courts of the State of California. Seller and Purchaser each irrevocably consents to service of process out of the aforementioned courts and waives any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or in connection with this Agreement brought in the aforementioned courts.

Section 14.5. Assignment. This Agreement binds and benefits the parties and their respective successors and assignees. Purchaser shall have the right to freely assign any of its rights under this Agreement provided, however, Seller will not assign any of its rights under this Agreement prior to the Closing without the prior written discretionary consent of Purchaser. No party may delegate any performance of its obligations under this Agreement, except that Purchaser may at any time delegate the performance of its obligations to any Affiliate of Purchaser so long as Purchaser remains fully responsible for the performance of the delegated obligation.

Section 14.6. Successors and Assigns. All agreements made and entered into in connection with this transaction shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

Section 14.7. Amendments; Waivers. No alteration, modification or change of this Agreement shall be valid except by an agreement in writing executed by the parties hereto. Except as otherwise expressly set forth herein, no failure or delay by any party hereto in exercising any right, power or privilege hereunder (and no course of dealing between or among any of the parties) shall operate as a waiver of any such right, power or privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any such right, power or privilege shall preclude the further or full exercise thereof.

Section 14.8. Entire Agreement. This Agreement merges all previous negotiations and agreements between the parties hereto, either verbal or written, and constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement.

Section 14.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile and/or PDF signatures shall be deemed original signatures.

Section 14.10. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not materially (a) alter the terms of this Agreement, (b) diminish the benefits of this Agreement or (c) increase the burdens of this Agreement, for any person.

Section 14.11. Section Headings. The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section 14.12. Interpretation. As both parties have participated in the drafting of this Agreement, any ambiguity shall not be construed against either party as the drafter. Unless the context of this Agreement clearly requires otherwise, (a) "or" has the inclusive meaning frequently identified with the phrase "and/or," (b) "including" has the inclusive meaning frequently identified with the phrase "including, but not limited to" and (c) references to "hereof," "hereunder" or "herein" or words of similar import relate to this Agreement.

Section 14.13. Reasonable Access to Records and Certain Personnel. For a period of six (6) months following the Closing (or until the closing of the Bankruptcy Case, if the Bankruptcy Case is closed sooner): (i) Purchaser shall permit Seller's counsel and other professionals and counsel for any successor to Seller and its respective professionals (collectively, "Permitted Access Parties") reasonable access to the financial and other books and records relating to the Purchased Assets or the Business, which access shall include (xx) the right of such Permitted Access Parties to copy, at such Permitted Access Parties' expense, such documents and records as they may request, and (yy) Purchaser's copying and delivering to the relevant Permitted Access Parties such documents or records as they may request, but only to the extent such Permitted Access Parties furnish Purchaser with reasonably detailed written descriptions of the materials to be so copied and the applicable Permitted Access Party reimburses Purchaser for the reasonable costs and expenses thereof, and (ii) Purchaser shall provide the Permitted Access Parties (at no cost to the Permitted Access Parties) with reasonable access during regular business hours to assist Seller and the other Permitted Access Parties in their post-Closing activities (including, without limitation, preparation of tax returns), provided that such access does not materially interfere with Purchaser's business operations and does not require access to Purchaser documents which are covered by a duty of confidentiality or impact protection of such documents under attorney-client privilege.

Section 14.14. Third Parties. Nothing herein, expressed or implied, is intended to or shall confer on any person other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 14.15. Disclosure. Purchaser and Seller shall agree on timing and content of disclosure of the Transaction to employees of the Debtor. Purchaser shall have the right to disclose information about the transaction after the Closing

Section 14.16. Definitions. For purposes of this Agreement (including the Disclosure Schedules hereto) the terms defined in this Agreement shall have the respective meanings specified herein, and, in addition, the following terms shall have the following meanings:

“Advances” shall have the meaning ascribed to it in the Credit Facility Agreement.

“Affiliate” means, as to any Person, any other Person, which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, direct or indirect, of (i) 20% or more of the then outstanding voting securities of such Person, or (ii) the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other direct or indirect ownership interest, by Contract or otherwise.

“Bankruptcy Code” means 11 U.S.C. Section 101, et. seq., and any amendments thereof.

“Bankruptcy Case” shall mean the case commenced by Seller under chapter 11 of the Bankruptcy Code.

“Benefit Arrangement” means any employment, consulting, severance or other similar contract, plan, arrangement or policy, and each plan, arrangement (written or oral), program, agreement or commitment providing for insurance coverage (including any self-insured arrangements), workers’ compensation, disability benefits, supplemental unemployment benefits, vacation benefits, retirement benefits, life, health, disability or accident benefits or for deferred compensation, profit-sharing bonuses, stock options, stock purchases or other forms of incentive compensation or post-retirement insurance, compensation or benefits which (A) is not a Welfare Plan, Pension Plan or Multi-employer Plan, and (B) is entered into, maintained, contributed to or required to be contributed to, by Seller or an ERISA Affiliate or under which Seller or any ERISA Affiliate may incur any liability.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any written or oral contract, agreement, lease, license, instrument, or other document or commitment, arrangement, undertaking, practice or authorization that is binding on any Person or its property under any applicable Law.

“Cure Costs” shall have the meaning ascribed to such term under the Bankruptcy Code.

“Disclosure Schedule” means the schedule executed and delivered by Seller to Purchaser as of the Closing Date setting forth the exceptions to the representations and warranties contained in Article 7 and certain other information called for by this Agreement. Unless otherwise specified, each reference in this Agreement to any numbered schedule is a reference to the corresponding numbered schedule that is included in the Disclosure Schedule.

"Employee Plans" means all Benefit Arrangements, Pension Plans and Welfare Plans.

"Environmental Claim" shall mean any claim, action, demand, order, or notice by or on behalf of, any Governmental Authority or person alleging potential liability arising out of, based on or resulting from the violation of any Environmental Law or permit or relating to any Hazardous Materials.

"Environmental Laws" shall mean all Laws that are applicable to the Business or relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to pollution or protection of the environment, health, safety or natural resources, including, without limitation, those relating to (A) the Releases or threatened releases of Hazardous Materials or materials containing Hazardous Materials or (B) the manufacture, generation, handling, treatment, storage, transport, disposal or handling of Hazardous Materials or materials containing Hazardous Materials.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"Family Member" means, with respect to any individual (i) the individual, (ii) the individual's spouse, (iii) any other natural Person who is related to the individual or the individual's spouse within the second degree (including adopted children) and (iv) any other natural Person who resides with such individual.

"Financial Statements" means the Year-End Financial Statements and the Interim Financial Statements.

"GAAP" means generally accepted accounting principles as used in the United States, as in effect from time to time.

"Governmental Authority" means any federal, state, provincial, municipal and foreign governmental entity, authority, or agency, or any other political subdivision, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"Hazardous Materials" means all substances, matters and other particles defined or listed as "hazardous" or "toxic" under Environmental Laws or are otherwise subject to or regulated by Environmental Laws.

"Laws" means any federal, state, provincial, local or foreign statute, law, ordinance, regulation, rule, code, order or other requirement or rule of law.

"Leased Real Property" means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures, or other interest in real property which is used in Seller's business pursuant to the Assumed Lease.

"Legal Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Liability” means any liability, indebtedness, obligation, expense, claim, loss, cost, damage, obligation, responsibility, guaranty or endorsement of or by any Person, absolute or contingent, accrued or unaccrued, known or unknown, due or to become due, liquidated or unliquidated, whether or not secured.

“Liens” means any security interests, mortgages, interests, liens, pledges, charges, defects of title, options and other rights of third parties, rights of first refusal, claims (as defined in Section 101 of the Bankruptcy Code), or any other encumbrance or restriction on ownership provided such encumbrance or restriction on ownership can be overridden by Section 363 of the Bankruptcy Code. “Liens” shall not include liens for current taxes not yet due and payable.

“Material Adverse Effect” or “Material Adverse Change” means a change in or effect on the Purchased Assets or the Assumed Liabilities that is or could reasonably be expected to materially and adversely affect the Purchaser’s ability to utilize the Purchased Assets taken as a whole. Material Adverse Change does not include any change or effect caused by war, acts of nature, general strike, acts of terror, general economic changes or conditions or changes in Laws; unless such Laws or conditions apply solely or principally to the Business or the Company.

“Multiemployer Plan” means any “multiemployer plan” as defined in Section 3(37) of ERISA.

“Ordinary Course of Business” means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).

“Pension Plan” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) which Seller or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, or has maintained, administered, contributed to or was required to contribute to, or under which Seller or any ERISA Affiliate may incur any liability.

“Person” means any corporation, partnership, limited liability company, joint venture, business association, entity or individual.

“Release” shall mean any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment, including the movement of Hazardous Materials through the air, soil, surface water or groundwater.

“Sale Motion” means the motion to be filed with the Bankruptcy Court by Seller seeking (a) approval of the terms and conditions of the Transaction Documents, and (b) authorization for (i) the sale of the Purchased Assets pursuant to Section 363 of the Bankruptcy Code and the assumption and assignment of the Purchased Assets that are executory contracts pursuant to Section 365 of the Bankruptcy Code, free and clear of all Liens.

“Sale Order” means the order of the Bankruptcy Court granting the relief requested in the Sale Motion and authorizing the sale of the Purchased Assets pursuant to Section 363 of the

Bankruptcy Code and the assumption and assignment of the Purchased Assets that are executory contracts pursuant to Section 365 of the Bankruptcy Code, free and clear of all Liens, claims and interests.

“Sale Procedures Motion” means the motion to be filed with the Bankruptcy Court seeking approval of the bidding procedures as contemplated pursuant to Article 3 hereof.

“Sale Procedures Order” means the order entered by the Bankruptcy Court with respect to the Overbid Procedures Motion and more fully described in Section 3.3 hereof.

“Taxes” means taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, territorial, local or foreign taxing authority, including income, gross receipts, excise, property, sales, transfer, franchise, payroll, withholding, social security and other taxes, and shall include any interest, penalties or additions attributable thereto.

“Tax Return” means any return, report, information return or other document (including any related or supporting information).

“Welfare Plan” means any “employee welfare benefit plan” as defined in Section 3(1) of ERISA which Seller or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, or under which Seller or any ERISA Affiliate may incur any Liability.

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, each of the parties hereto has caused this Asset Purchase Agreement to be executed by its duly authorized representative as of the day and year first above written.

SELLER:

CHATSWORTH DATA CORPORATION,
INC., Debtor,

By: _____
Name: David Seror, solely in his capacity as
Chapter 11 Trustee of Chatsworth Data
Corporation.
Title: Chapter 11 Trustee of Chatsworth Data
Corporation

PURCHASER:

CDC Data, LLC

By: _____
Name: Howard Brand
Title: Managing Member

IN WITNESS WHEREOF, each of the parties hereto has caused this Asset Purchase Agreement to be executed by its duly authorized representative as of the day and year first above written.

SELLER:

CHATSWORTH DATA CORPORATION,
INC., Debtor,

By: 

Name: David Seror, solely in his capacity as
Chapter 11 Trustee of Chatsworth Data
Corporation.

Title: Chapter 11 Trustee of Chatsworth Data
Corporation

PURCHASER:

CDC Data, LLC

By: _____

Name: _____

Title: _____

Exhibit A

Sale Procedures Order

Lewis R. Landau (CA Bar No. 143391)
Attorney at Law
23564 Calabasas Road, Suite 104
Calabasas, California 91302
Voice and Fax: (888)822-4340
Email: Lew@Landaunet.com

Attorney for
David Seror, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re
Chatsworth Data Corporation,
Debtor.

Case No.: 1:09-bk-15075 MT

Chapter 11

**ORDER APPROVING BIDDING
PROCEDURES AND SCHEDULING SALE
HEARING**

Date: May 10, 2010
Time: 10:00 a.m.
Place: Courtroom 302; Judge Tighe
US Bankruptcy Court
21041 Burbank Blvd., 3rd Floor
Woodland Hills, California 91367

On May 10, 2010 at 10:00 a.m., the Court has considered the Motion to Approve Sale Bidding Procedures and Schedule Sale Hearing (the "Motion") [docket # 117] filed by David Seror, Chapter 11 Trustee ("Trustee") for Chatsworth Data Corporation ("Debtor"). The Court, finding notice properly given and good cause therefore, hereby **ORDERS** as follows:

1. The Trustee's Motion is granted.
2. A sale hearing is scheduled for June 7, 2010 at 11:00 a.m. ("Sale Hearing"). The Trustee shall file and serve his motion to approve the sale not later than May 17, 2010 attaching the proposed buyer's Asset Purchase Agreement ("APA")
3. The following bidding procedures are approved for the sale hearing:

///

1 (a) Competing offers to acquire the purchased assets shall:

2 (i) be submitted in writing to the Trustee and his counsel on or before 4:00
3 p.m. (Pacific Time) on the business day that is no later than one business day prior to the
4 date of the Sale Hearing;

5 (ii) set the minimum overbid to be \$1,550,000 and provide for a minimum total
6 cash consideration of at least \$1,300,000, and additional bids in increments of no less than
7 \$10,000;

8 (iii) be accompanied by a signed asset purchase agreement in form and
9 substance substantially similar to the APA together with a redlined, marked copy showing
10 all changes from the APA;

11 (iv) must not be subject to due diligence contingencies or other conditions;
12 provided however any bidder other than purchaser shall have an opportunity to review the
13 books and records of the Debtor, provided that such bidder shall execute a non-disclosure
14 agreement in form and substance acceptable to Trustee in Trustee's sole discretion
15 (notwithstanding the foregoing, all due diligence must be completed by all qualified
16 bidders prior to the Sale Hearing);

17 (v) remain open until the conclusion of the Sale Hearing, subject to timely
18 completion of due diligence;

19 (vi) contain terms and conditions no less favorable to Trustee than the terms and
20 conditions of the APA;

21 (vii) be accompanied by admissible evidence in the form of affidavits or
22 declarations establishing the bidder's good faith, within the meaning of Section 363(m) of
23 the Bankruptcy Code;

24 (viii) be accompanied by admissible evidence in the form of affidavits or
25 declarations establishing that the bidder is capable and qualified, financially, legally, and
26 otherwise, of unconditionally performing all obligations under the competing bid
27 agreement;
28

1 (ix) be for no less than substantially all of the purchased assets under the APA;
2 and

3 (x) contain a proposed closing date that is not later than the closing date under
4 the APA.

5 (b) If any bidders have submitted a qualifying competing bid in accordance with the
6 foregoing (each such bid, a "Qualified Bid"), then a public auction of the Purchased Assets (the
7 "Auction") shall be held at the Sale Hearing. The Auction shall be governed by the following
8 procedures:

9 (i) All bidders shall be deemed to have consented to the core jurisdiction of the
10 Bankruptcy Court and to have waived any right to jury trial in connection with any
11 disputes relating to the Auction or the sale of the purchased assets;

12 (ii) Bidding will commence at the amount of the highest Qualified Bid;

13 (iii) Each subsequent bid shall be in increments of no less than \$10,000; and

14 (iv) For the Purchaser, the breakup fee shall be taken into account in the bidding
15 process, such that if the bid is \$1,700,000 the purchaser under the APA may bid such
16 amount (\$1,660,000) plus the value of the Breakup Fee (\$50,000) to overbid the
17 \$1,700,000 bid for a total bid of \$1,710,000.

18 (c) The breakup fee in the amount \$50,000 plus actual reasonable costs and fees
19 incurred by purchaser under the APA is approved and shall be paid in the event that the
20 Bankruptcy Court enters an order approving an offer to purchase the purchased assets submitted
21 by a party other than purchaser under the APA no later than the closing of the sale of the
22 Purchased Assets to a third party;

23 (d) No other bidder for the purchased assets shall be entitled to payment of any
24 breakup fee;

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1 (e) Any entity that fails to submit a timely, conforming Qualified Bid, as set forth
2 above, shall be disqualified from bidding for the purchased assets at the auction or the Sale
3 Hearing.

4 **IT IS SO ORDERED.**

5 Dated:

6 _____
7 **MAUREEN TIGHE**
8 **UNITED STATES BANKRUPTCY JUDGE**
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In re Chatsworth Data Corporation	CHAPTER: 11
Debtor(s).	CASE NO.: 1:09-bk-15075MT

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
23564 Calabasas Road, Suite 104
Calabasas, CA 91302

A true and correct copy of the foregoing document described as NOTICE OF SALE OF ESTATE PROPERTY will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d), and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On 5/17/10 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

☒ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On 5/17/10 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follow. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Judge Tighe US Bankruptcy Court 21041 Burbank Blvd Ste 325 Woodland Hills CA 91367-6606

☐ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method) by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

5/17/10

Lewis R. Landau

/s/ Lewis R. Landau

Date

Type Name

Signature

Notice of Sale of Estate Property

In re Chatsworth Data Corporation	Debtor(s).	CHAPTER: 11 CASE NO.: 1:09-bk-15075MT
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ADDITIONAL SERVICE INFORMATION (if needed):

NEF Service Parties (category I):

Michael J Abbott on behalf of Creditor Linda Zabors
cvanburen@jonesbell.com

Stephen F Biegenzahn on behalf of Attorney Stephen Biegenzahn
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